



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

(petitioner)

DECISION

MRA-45/51986

PRELIMINARY RECITALS

Pursuant to a petition filed January 9, 2002, under Wis. Stats. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Ozaukee County Dept. of Social Services in regard to Medical Assistance (MA), a hearing was held on March 22, 2002, at Port Washington, Wisconsin. A hearing scheduled for February 27, 2002 was rescheduled at the request of the Petitioner. The record has been held open for an extended period of time to permit the Petitioner's attorney to make a written argument. The Petitioner's attorney has not taken advantage of the opportunity to submit an argument.

The issue for determination is whether the Petitioner's application for MA was correctly denied because of ownership of assets in excess of the MA asset limit.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Represented by:

Atty. Jane Miller

1214 Thirteenth Ave

PO Box 104

Grafton, WI 53024-0104

Respondent:

Wisconsin Department of Health and Family Services

Division of Health Care Financing

1 West Wilson Street, Room 250

P.O. Box 309

Madison, WI 53707-0309

By: Sandy Rabuck, ESS

Ozaukee County Dept Of Social Serv

121 W. Main Street

PO Box 994

Port Washington, WI 53074-0994

Administrative Law Judge:

David D. Fleming

Division of Hearings and Appeals

FINDINGS OF FACT

1. The Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Ozaukee County.

2. An application for institutional MA was filed with the county agency on behalf of the Petitioner on or about November 1, 2001. That application was denied due to excess assets.
3. The Petitioner and his spouse had assets at the time of the MA application in the approximate amount of \$ 389,000.00. This included liquid assets of \$60,308 and income producing real estate valued at about \$ 326,000. The county agency determined the MA asset limit to be \$ 87,000.00 plus the \$ 2000.00 MA asset limit.
4. The Petitioner had Social Security income in the amount of \$10,896.00 before Medicare premiums of \$600.00. Thus his monthly benefit was \$ 908.00. The Petitioner's community spouse had Social Security income in the amount of \$ 5112.00 before Medicare premiums of \$ 600.00 for a monthly benefit of \$ 426.00. In addition to their Social Security income the Petitioner and his spouse also had monthly income of about \$ 243.00 from interest and \$ 86.67 from IRA withdrawals. Their rental properties netted an estimated \$ 1262.17 per month (a Cedarburg property nets \$ 746.57 and a Post Washington property \$ 515.60). Thus total monthly income for the Petitioner and his spouse is \$ 2926.84. The Petitioner seeks to have assets, particularly the real property, transferred to the community spouse so as to increase her income to the community spouse income allocation limit.

DISCUSSION

The asset limit for this case was set pursuant to "spousal impoverishment" rules. "Spousal impoverishment" rules were created with passage of the federal Medicare Catastrophic Coverage Act of 1988 (MCCA), which included extensive changes in state Medicaid (MA) eligibility determinations in cases involving married persons. In spousal impoverishment cases, the institutionalized spouse resides in a nursing facility and "community spouse" refers to the person married to the institutionalized individual. Wis. Stats. §49.455(1). Generally, no income of a community spouse is considered to be available for use by the other spouse during any month in which that other spouse is institutionalized. Wis. Stats. § 49.455(3).

The MCCA created asset eligibility limits for spousal impoverishment households that are more generous than those for a non-spousal impoverishment household (e.g., \$2,000 for a single person). When initially determining whether an institutionalized spouse is MA asset eligible, county agencies are instructed to review the combined assets of the institutionalized spouse and the community spouse. *MA Handbook*, Appendix 23.4.1. All available assets owned by the couple are to be considered. Homestead property, one vehicle, and anything set aside for burial is exempt from the determination. The couple's total assets are then compared to the CSAS (i.e., an asset limit) to determine eligibility. The law in 2001 permitted couples with assets in excess of \$ 174,000 to assign a maximum of \$ 87,000 of those assets to the community spouse. §49.455(6)(b)3, Wis. Stats. *MA Handbook*, Appendix §23.4.2. Also, an institutionalized person can have up to an additional \$ 2,000 in assets and still maintain the spouse's eligibility for Medical Assistance. Because the Petitioner and his spouse had assets in excess of \$ 174,000 the county agency concluded that the asset limit was \$ 89,000.

In this case the Petitioner seeks to apply spousal impoverishment income and asset allocation rules to the determination of eligibility. Briefly those rules are as follows. Medical assistance rules require nursing home residents to "apply their available income toward the cost of their care." §HFS 103.07(1)(d), Wis. Adm. Code. However, both Wisconsin and federal medical assistance laws contain provisions that grant an allowance to the spouse of an institutionalized person so that the spouse does not fall into poverty. See §49.455, Wis. Stats., and 42 U.S.C. §13964-5. The minimum monthly maintenance needs allowance in 2001 was the lesser of \$ 2175 or \$ 1875 plus excess shelter costs. *MA Handbook*, Appendix §23.6.0. In 2001 excess shelter costs were shelter costs above \$ 562.50. *Id.* In addition to income, an institutionalized person may allocate assets to the community spouse. If, however, the community spouse's income falls short of his or her needs, s/he may request through a fair hearing that the asset limit be increased so that more income can be produced. The administrative law judge must assign sufficient assets to generate "enough income to raise the community spouse's income to the minimum monthly maintenance needs

allowance...” §49.455(8)(d), Stats. However, Wisconsin law, in what is referred to as the income first rule, requires that the institutionalized spouse make all of his income, except for the sum equal to the \$45 personal needs allowance, available to the community spouse before the asset limit is increased. §49.455(8)(d), Stats.; 49.45(7)(a), Stats. Wisconsin courts had overturned this “income first rule” but just prior to the hearing conducted for this appeal the United States Supreme Court reinstated it. *Wisconsin Department of Health and Family Services v. Irene Blumer*, 534 U.S. 473, 122 S. Ct. 962 (2002) reversing and remanding *Blumer v. Wisconsin Department of Health and Family Services*, 237 Wis. 2d 810, 615 N.W.2d 647 (2000). Thus the income first rule again applies.

This allocation of income and assets is, however, done *after* a person is determined to be eligible for MA. See *MA Handbook, Appendix 23.4.5 as to assets and 23.6.0 as to income*. And again, to obtain MA eligibility in the first instance, a couple may not have assets in excess of the spousal impoverishment asset limit. The asset limit applicable here is \$ 89,000.00. (It has been increased, but only to \$92,660 for 2003.) As the assets of the Petitioner and his spouse are in excess of that figure the county agency correctly denied the Petitioner’s MA application. No argument has been presented to challenge this process.

CONCLUSIONS OF LAW

That the Petitioner has assets in excess of the MA asset limit thus his application for MA was correctly denied.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as “PARTIES IN INTEREST.”

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in § 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in § 227.53 of the statutes.

Given under my hand at the City of
Milwaukee, Wisconsin, this 9th day of
June, 2003

/sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals
5-30/DDF